
TITLE 312 NATURAL RESOURCES COMMISSION

Economic Impact Statement

LSA Document #12-403

[IC 4-22-2.1-5](#) Statement Concerning Rules Affecting Small Businesses**Estimated Number of Small Businesses Subject to this Rule:**

Five businesses that may be impacted by removing the rusty blackbird from the list of migratory birds for which a permit is not required when creating a nuisance or public health threat and possibly three businesses that may want to do construction where the rayed bean (mussel) is found.

Estimated Average Annual Reporting, Record Keeping, and Other Administrative Costs Small Businesses Will Incur for Compliance:

\$50 per year (\$10 per hour times 5 hours per year) for a business that needs to submit the paperwork for the state application form, including completing the application form and submitting it to the DNR to take a rusty blackbird.

\$440 (\$15 per hour times 16 hours, plus a \$200 application fee) for a small business that intends to do construction in a floodway or public freshwater lake where the rayed bean (mussel) is found in order to prepare a mitigation plan or use measure to avoid or minimize, or both, impacts to this mussel.

Estimated Total Annual Economic Impact on Small Businesses to Comply:

\$490 per year (includes the administrative cost and permit application fees), and only if a rusty blackbird needs to be taken or if construction will be done in a location where the rayed bean (mussel) is found. There is no cost for the state permit to take the rusty blackbird, but there is a \$200 application fee for a Construction in a Floodway Permit and a \$100 application fee for a Public Freshwater Lake permit.

Justification Statement of Requirement or Cost:

The U.S. Fish and Wildlife Service already removed the rusty blackbird from the list of birds that can be taken without a federal permit due to concerns about the populations of these birds. Therefore, the DNR must comply with federal law by removing this exemption. The state permit is free of charge and requires the same information as the federal permit.

The U.S. Fish and Wildlife Service already listed the rayed bean as a federally endangered mussel. Therefore, the only new costs required by the state with this rule change will be for time and expenses related to mitigation plans to offset impacts to these mussels, or the plans to avoid/minimize impacts. This will only affect businesses that intend to do work in the floodway or lake where this mussel is found. A federal permit is already required and a mitigation plan or other plans to offset impacts will be required for the federal permit as well.

Regulatory Flexibility Analysis of Alternative Methods:

The DNR already requires a permit to take a migratory bird for which there is no season (such as raptors) or outside the season (if there is one). Since a federal permit is already required, asking a business to submit the same application to the DNR, without any fee, is reasonable. Without the issuance of a state permit, DNR would not have information regarding the number and locations where these species are being taken. The DNR is required to provide for the protection, management, care, and survival of wild animal populations in Indiana under [IC 14-22-2-3](#), and the DNR would not have any control over the taking of these species if a state permit were not required. The DNR does not believe that any other alternatives are necessary. The DNR believes that requiring a free permit with the same paperwork as is required for the federal permit is appropriate and reasonable.

The DNR already requires a Construction in a Floodway Permit for work in a floodway under [IC 14-28-1-22](#) and [312 IAC 10](#) and for the alteration of a shoreline on a Public Freshwater Lake (such as Lake Maxinkuckee) under [IC 14-26-2-23](#) and [312 IAC 11](#). Mitigation and/or avoidance and minimization of impacts to the endangered species of mussel are already required by the U.S. Fish and Wildlife Service, and mitigation is typically required for work in a floodway where there are unreasonably detrimental impacts to fish, wildlife or botanical resources, in accordance with [IC 14-28-1-22](#)(e) or if there will be significant harm to the fish and wildlife resources in a public freshwater lake in [IC 14-26-2-23](#)(c). Therefore, in order to comply with these state laws and help prevent this mussel from becoming extinct in Indiana, businesses that plan any construction in locations where this mussel is found will need to prepare a mitigation plan or make efforts to avoid or minimize impacts to this mussel. Again, the DNR is required to provide for the protection, management, care, and survival of wild animal populations pursuant to [IC 14-22-2-3](#) in Indiana, and the DNR would not be protecting this species and ensuring its survival in the future without these requirements.

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